

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH J. GIBSON, Jr.,	§	
and KIMBERLY GIBSON	§	No. 279, 2011
	§	
Plaintiffs Below-	§	Court Below: Superior Court
Appellants,	§	of the State of Delaware in and
v.	§	for Kent County
	§	
CAR ZONE, and SECURITY	§	C.A. No. 10A-08-009
NATIONAL	§	
	§	
Defendants Below-	§	
Appellees.	§	

Submitted: September 15, 2011

Decided: November 8, 2011

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 8th day of November 2011, it appears to the Court that:

1) Plaintiffs-Below/Appellants, Kenneth Gibson and Kimberly Gibson (“Gibson”), appeal from a Justice of the Peace decision to deny Gibson’s motion to reopen, pursuant to Justice of the Peace Court Civil Rule 60(b), an order granting a directed verdict to Defendants-Below/Appellees Car Zone and Security National in the debt action; a Court of Common Pleas decision affirming the Justice of the Peace decision; and a Superior Court decision affirming the Court of Common Pleas decision. All three courts found that Gibson attempted to use Rule 60(b) to circumvent the appeals process for the underlying Justice of the Peace order. On

appeal to this Court, Gibson contends that the Superior Court erred when it held that the third party beneficiary claim was not properly alleged in the Justice of the Peace Court, that the matter did not implicate Delaware Lawyers' Rule of Professional Conduct 3.3, and that relief was not warranted under Rule 60(b)(3). We find no merit to Gibson's appeal and affirm.

2) In February 2005, Kenneth Gibson purchased a used truck from Car Zone for his wife for \$11,549.00. Gibson also purchased a service contract for the truck. The service contract covered 24 months or 26,500 miles. Car Zone arranged financing through Security National. In July 2005, Kimberly Gibson was driving the truck when the front tire fell off. Service reports indicated that rust was found throughout the vehicle. Gibson subsequently sought to cancel the sale under 6 *Del. C.* § 2-608. Car Zone refused.

3) Gibson filed a *pro se* action against Car Zone and Security National in the Justice of the Peace Court seeking a refund of the purchase price. Prior to trial, the Justice of the Peace dismissed Kimberly Gibson as a party in the matter because she was neither a party to the contract at issue, nor a registered owner of the truck. At trial, the court granted Car Zone and Security National's motions for a directed verdict on grounds that Gibson "failed to provide any evidence whatsoever to sustain his claim."

4) On May 29, 2007, Gibson appealed to the Court of Common Pleas. On July 5, 2007 the Court of Common Pleas dismissed the appeal on grounds that Gibson had failed to file a Complaint or certified transcript of the proceedings below. Over one year later, Gibson filed a complaint in the Court of Common Pleas. This complaint advanced the same claims as those raised before the Justice of the Peace Court. In response to Car Zone and Security National's motions to dismiss, Gibson filed a cross-motion under Rule 60(b) to reopen the Justice of the Peace Court Order. The Court of Common Pleas denied Gibson's motion and dismissed the complaint for want of jurisdiction.

5) Gibson then filed a motion to reopen the judgment in the Justice of the Peace Court. Car Zone moved for dismissal and Rule 11 sanctions. After hearing oral argument, the court denied both motions. The court held Gibson was attempting to "have a new trial pursuant to Rule 60(b) after failing to properly effectuate an appeal of this Court's Order." The court also found no support for Gibson's claim of fraud upon the court or Gibson under Rule 60(b)(3).

6) Gibson appealed to the Court of Common Pleas. The Court of Common Pleas affirmed the Justice of the Peace Court's ruling, explaining that Gibson's "failure to file a timely appeal of the trial court's decision may not be circumvented through a Rule 60(b) motion."

7) Gibson then appealed to the Superior Court contending that "[s]ince

the Justice of the Peace was misled by the Defense as to the law and as a result did not consider the facts, or correct law,” the denial of Gibson’s motion for relief from judgment pursuant to Rule 60(b) was an abuse of discretion. The Superior Court affirmed the decisions of the Court of Common Pleas and the Justice of the Peace Court. This appeal followed.

8) Gibson first contends that the Superior Court erred when it held that a third party beneficiary claim was not properly alleged in the Justice of the Peace Court. But, the Superior Court did not so hold. Rather, as the Superior Court explained, the only substantive issue before that court was “whether the Court of Common Pleas was correct to affirm the denial of Plaintiff’s motion, which sought relief from judgment on the theory that judgment had been procured through ‘fraud upon the court.’” The possibility of a third-party beneficiary claim is only relevant in the context of Gibson’s contention that defense counsel committed “fraud on the court” under Rule 60(b), a claim that fails for reasons discussed further below.

9) Gibson argues that the Superior Court erred when it found that Delaware Lawyers’ Rule of Professional Conduct 3.3 was not implicated on these facts. Gibson appears to argue that defense counsel violated Rule 3.3(a)(2) by not disclosing to the court “the correct law of third beneficiary under the UCC[.]” This argument lacks merit. Rule 3.3(a)(2) provides that a lawyer shall not knowingly “fail to disclose to the tribunal legal authority in the controlling jurisdiction known

to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel[.]” The Rule does not require defense counsel to develop and advance potential legal claims for the plaintiff. Moreover, Gibson has not alleged that defense counsel actually knew of adverse legal authority that would have been relevant to this case and contrary to their clients’ interests. Accordingly, the Superior Court did not err in finding that Rule 3.3(a)(2) was not implicated on these facts.

10) Finally, Gibson contends that the Superior Court erred in its consideration of Gibson’s motion to reopen the judgment under Justice of the Peace Court Rule 60(b)(3). The rule provides that the court “may relieve a party or a party’s legal representative from a final judgment, order or proceeding for the following reasons: . . . (3) fraud, misrepresentation or other misconduct of an adverse party[.]”¹ “A motion to reopen a judgment under Rule 60(b) is addressed to the sound discretion of the trial court and will be reviewed by this Court on appeal for an abuse of that discretion.”² This Court recently explained the scope and purpose of Rule 60(b):

On appeal from the grant or denial of a motion for relief under Rule 60(b) a party may attack only the propriety of the order; Rule 60(b) does not permit the appellant to attack the underlying judgment for an error which he could have complained of on appeal from it. We have explained that there

¹ J.P. Ct. Civ. R. 60(b).

² *Battaglia v. Wilmington Savings Fund Society*, 379 A.2d 1132, 1135 (Del. 1977).

are two significant values implicated by Rule 60(b). The first is ensuring the integrity of the judicial process and the second, countervailing, consideration is the finality of judgments. Because of the significant interest in preserving the finality of judgments, Rule 60(b) motions are not to be taken lightly or easily granted. A proper standard must strike a balance between the interest in bringing litigation to an end and the countervailing concern that justice is carried out.³

11) Here, the Superior Court properly found that there was no support for a finding of fraud or other misconduct by opposing counsel. Gibson’s failure to raise a third party beneficiary claim and failure to present sufficient evidence in the underlying action do not provide a basis for alleging fraud by the other party, or for otherwise granting relief under Rule 60(b). The Justice of the Peace Court granted judgment in favor of Car Zone and Security National in the underlying suit because Gibson “failed to provide any evidence whatsoever to support his claim.”⁴ We find no abuse of discretion in the denial of Gibson’s motion to reopen the judgment.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

³ *Wilson v. Motague*, 19 A.3d 302 (Del. 2011) (internal citations and quotations omitted).

⁴ Gibson also appears to be using Rule 60(b) to attack the original order on grounds that could have been complained of on appeal—the dismissal of Kimberly Gibson from the matter. As we explained in *Dixon*, this is an improper use of Rule 60(b). *Dixon v. Delaware Olds, Inc.*, 405 A.2d 117, 119 (Del. 1979) (denying attempted use of Rule 60(b) as substitute for motion for new trial and appeal from judgment).